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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,980	01/29/2004	James William Fahrny	007412.00115	5334

71867 7590 06/02/2009
BANNER & WITCOFF, LTD
ATTORNEYS FOR CLIENT NUMBER 007412
1100 13th STREET, N.W.
SUITE 1200
WASHINGTON, DC 20005-4051

EXAMINER

GYORFI, THOMAS A

ART UNIT	PAPER NUMBER
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2435

MAIL DATE	DELIVERY MODE
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06/02/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES WILLIAM FAHRNY
and CHARLES COMPTON

Application 10/767,980
Technology Center 2100

Mailed: June 1, 2009

Before Laverne Smith, *Supervisory Paralegal Specialist, Chemical Team*
Smith, *Supervisory Paralegal Specialist, Chemical Team*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on June 3, 2008. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matter requiring attention prior to docketing is identified below:

A review of the file reveals that it is not clear from the record whether the examiner considered the Amendment filed June 4, 2008. A written

communication notifying Appellants of the response to the Amendment is required. See 37 C.F.R. § 41.33(b) which states:

(b) Amendments filed on or after the date of filing a brief pursuant to § 41.37 may be admitted:

(1) To cancel claims, where such cancellation does not affect the scope of any other pending claim in the proceeding, or

(2) To rewrite dependent claims into independent form.

It is not clear whether this Amendment has been considered because an Advisory Action has not been mailed to indicate whether or not the proposed amendment will or will not be entered for purposes of appeal.

According, it is **ORDERED** that the application is returned to the Examiner for:

- 1) consider the Amendment filed June 4, 2008, with appropriate written notification by the Examiner to Appellants of such consideration; and
- 2) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

LS/tc

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